IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **Natural Milk Production, LLLP, dba Ultimilk Dairy Company** **Shelby County – Facility #64174**	ADMINISTRATIVE CONSENT ORDER NO. 2008-AFO-40

TO: Dr. Matt VanBaale, Chief Operating Officer
Natural Milk Production, LLLP, dba Ultimilk Dairy Company
1729 400th Street
Kirkman, IA 51447

Mike Blaser, Registered Agent
Brown Winick
666 Grand Avenue, Suite 2000
Des Moines, IA 50309

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Natural Milk Production, LLLP, dba Ultimilk Dairy Company (Natural Milk) for the purpose of resolving the issues surrounding a prohibited discharge into the West Nishnabotna River. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Dan Stipe, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The Natural Milk dairy operation is located at 1729 1400th Street, rural Kirkman, Iowa (Section 35, T80N, R38W, Shelby County, Iowa). The facility consists of three confinement barns that house 6,071 dairy cattle (8,499 animal units). Manure handling structures at the facility consist of a large solids settling area followed by a two cell anaerobic lagoon. Silage is stored on a concrete pad and runoff/leachate from the silage storage pad accumulates in an earthen storage basin. Manure and silage runoff/leachate are land applied using a center pivot irrigation system.

2. On July 29, 2008, DNR Field Office 4 received a complaint regarding a discharge from the Natural Milk facility. The complainant alleged a red, frothy discharge from the Natural Milk center pivot into the West Nishnabotna River.

3. On July 29, 2008, Dan Stipe, DNR Field Office 4 supervisor, investigated the complaint. As Mr. Stipe approached the Natural Milk facility from the west he observed a center pivot irrigation system operating on the north side of 1400th Street and relatively near the West Nishnabotna River. He also observed a similar irrigation system on the south side of 1400th Street, but it was not in operation. Mr. Stipe went to the bridge over the West Nishnabotna River located about 1.37 miles west of the facility and immediately west of the north center pivot irrigation equipment. Mr. Stipe observed a red, frothy liquid discharging to the West Nishnabotna River from a 24 inch tube located on the northeast side of the bridge. The discharge was entering the river and was causing discoloration and a frothy appearance to the water along the east bank of the West Nishnabotna River. Mr. Stipe contacted Dan Olson, DNR Field Office 4 senior environmental specialist, to assist in the investigation. Mr. Stipe proceeded to the facility office to discuss the discharge with Natural Milk facility personnel. Mr. Stipe spoke to Billy Terrell, Natural Milk employee, and Mr. Terrell confirmed that the center pivot north of the road was Natural Milk's equipment. Mr. Stipe informed Mr. Terrell of the discharge and Mr. Terrell left to investigate the matter.

4. Following the visit to the facility, Mr. Stipe returned to the West Nishnabotna River and began collecting laboratory samples. He collected samples and conducted field tests from a site 50' upstream of the discharge, from the discharge itself, and from a site 50' downstream of the discharge. The laboratory results and field tests indicated the following:

Location	BOD_5 (mg/L)	TSS (mg/L)	Membrane Fecal Coliform (MFC)	NH_3N (mg/L)	pH	Temperature
50' Upstream of the Discharge	8	540	180,000	0.12	8.3	73°
Point of Discharge	44	160	2,300	8.9	8.5	82°
50' Downstream of the Discharge	34	320	120,000	1.8	8.5	75°

5. Mr. Olson arrived on site following the collection of samples. He and Mr. Stipe observed Mr. Terrell attempting to place a piece of plywood between the roadside ditch and the 24 inch tube leading to the West Nishnabotna River. This action slowed the discharge, but did not stop it. Mr. Olson and Mr. Stipe walked into the corn field and observed an over application of silage runoff/leachate onto the corn field.

6. Mr. Olson and Mr. Stipe observed the leachate storage area and collected a laboratory sample from the silage runoff/leachate area. The sample results indicated the following:

Location	BOD_5 (mg/L)	TSS (mg/L)	Membrane Fecal Coliform (MFC)	NH_3N (mg/L)
Silage Storage Structure	68	130	1,400	9.1

7. Mr. Olson and Mr. Stipe concluded the visit by inspecting the silage storage area. They observed leachate coming from stored hay. The leachate and runoff from the concrete pad accumulated in the earthen basin at the bottom on the concrete pad. Mr. Stipe informed Dr. Van Baale that the discharge was considered a prohibited discharge. Prior to leaving Mr. Olson and Mr. Stipe observed that Mr. Terrell had placed dirt between the 24 inch tube and the roadside ditch, which essentially stopped further discharges. Dr. Van Baale stated the facility might hire someone to pump the pooled silage runoff/leachate from the roadside ditch.

8. On August 1, 2008, Mr. Olson conducted a manure management plan (MMP) onsite inspection and a follow-up spill inspection at the Natural Milk facility. During the MMP inspection portion of the visit, Mr. Olson found several deficiencies with the facility's MMP and records. The facility did not have a current MMP onsite. The MMP had not been updated to include the following: new fields, application rates for injection, spring

application, the nutrients applied to the land in the MMP when silage leachate was applied, and the application rate for continuous corn. Additionally, Mr. Olson noted the following deficiencies: 1) the method of manure application was not recorded for each field; 2) the field identifiers used in the application records did not correspond to those in the MMP; 3) there were no statement of intents for fields that the owner of the confinement did not own or rent for crop production; 4) the facility staff that applied silage leachate and were not certified applicators and 5) heavy weeds and vegetation were observed on and around the berms. During the follow-up spill inspection portion of the visit, Mr. Olson noted that there was significant ponding in the field where the silage leachate had been applied and there was no evidence that there had been any attempt to remove the leachate from the roadside ditch.

9. On August 8, 2008, DNR Field Office 4 issued a Notice of Violation to Natural Milk for the violations discovered during the July 29 and August 1 visits to the facility. The violations included prohibited discharges, water quality violations, and MMP violations. The letter included a summary of both inspections as well as the inspection photographs. The letter also informed Natural Milk that the matter was being referred for further enforcement review.

10. On September 16, 2008, Natural Milk reported a manure spill at its facility to DNR Field Office 4. Dr. Van Baale reported that a below ground pipe broke causing manure to rupture to the surface and flow through a grassed waterway in a nearby roadside ditch. Alison Manz, DNR Field Office 4 environmental specialist, conducted an investigation the same day as the report was received. Ms. Manz observed that a flume pipe had ruptured between two of the confinement buildings on the east side of the facility. The manure flowed through a grassed waterway into a roadside ditch. Prior to Ms. Manz's arrival, Natural Milk personnel had constructed bermed areas in the roadside ditch and at the culvert of an unnamed tributary of the East Branch of the West Nishnabotna River. Ms. Manz conducted a follow-up inspection in the evening and Dr. Van Baale stated that approximately 32,000 gallons of liquid had been pumped and the ammonia levels in the creek dropped considerably.

11. Since the date of the July 29, 2008 release from the center pivot system, Natural Milk represents that it has taken the following steps to remedy the cause of the release and to provide that Natural Milk does not discharge or propose to discharge, at its cost: (a) a communication system was added to the irrigation pumping system so that when the pivot system is turned off, the pump is also automatically shut off; (b) a pump was rented for the remainder of the 2008 application season which could be shut down automatically rather than relying on using a tractor with a PTO driven pump to supply the pivot system; (c) a new stationary electric pump has been ordered for installation that has the same automatic shut down features as the pumping system that was rented for the remainder of the 2008 application season, which new pump is expected to be delivered prior to the end of 2008 and will be installed in the spring of 2009; (d) a pressure safety switch has been ordered and will be added to the irrigation line at the time the new pumping system is installed, the switch senses a abnormal increases or decreases in line pressure and then automatically shuts the

pumping system down and (e) Natural Milk has implemented a new policy that requires hourly visual inspections of the pumping system at times the system is in operation.

12. Since the date of the August 1, 2008 inspection by the DNR, Natural Milk represents that it has addressed deficiencies noted during the inspection as follows: (a) Natural Milk has completed training and has become certified as a Commercial Manure Applicator under Iowa law; (b) two employees of Natural Milk have completed training and have become certified as manure applicators under Iowa law and (c) Natural Milk has brought its MMP into full compliance with Iowa laws and regulations.

13. Since the date of the September 16, 2008 release from the broken underground manure line, Natural Milk represents that it has taken the following steps to remedy the cause of the release and to provide that Natural Milk does not discharge or propose to discharge, at its cost: (a) concrete valves have been installed in the drainage ditches adjacent to the Natural Milk operation and remain closed at all times other than to release agricultural stormwater after precipitation events or snow melting, the valves are designed to contain any potential future accidental release on Natural Milk property so as to not allow a release to impact the waters of the state; (b) Natural Milk has ordered an equalizing lagoon pipe to allow the cells of the lagoon system to remain equalized at a certain level, to avoid potential freeboard issues in one cell of the system while other cells have excess capacity, and (c) Natural Milk has scheduled an environmental assessment of its entire manure storage and handling infrastructure and practices with Validus, LLC, which assessment is to be undertaken in January of 2009 after some of the improvements and modifications referred to above in paragraphs 11-13 are in place. DNR has no basis to disagree with the statements made by Natural Milk in Paragraphs 11, 12, and 13 but has not independently verified the accuracy of such statements.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. DNR Field Office 4 observed the discharge of untreated pollutants into the West Nishnabotna River. The above-facts indicate a violation of this provision.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. DNR Field Office 4 observed a red, frothy liquid discharge into the West Nishnabotna River and noted a discoloration and frothy appearance to the river. The laboratory samples indicated elevated levels of BOD_5 and NH_3-N in the discharge. The above-facts disclose a violation of one or more of these criteria.

3. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

4. 567 IAC 65.17(12) states the owner of a confinement feeding operation who is required to submit a MMP shall maintain a current MMP at the site of the confinement feeding operation or at a residence or office of the owner or operator of the operations within 30 miles of the site. The MMP shall include completed manure sales forms for a confinement feeding operation from which manure is sold. If manure management practices change, a person is required to submit a MMP identifying those changes consistent with this rule. If values other than the standard table values are used for MMP calculations, the source of the value used shall be identified. During Mr. Olson's MMP onsite inspection he noted that Natural Milk did not have a current MMP on site as well as several other deficiencies in the MMP. The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, it is hereby ordered and Natural Milk agrees to do the following:

1. Natural Milk shall land apply manure and all wastewaters in a manner that will not cause surface or groundwater contamination;

2. Natural Milk shall maintain its MMP and land application records in accordance with DNR rules set out in 567 IAC 65; and

3. Natural Milk shall pay a penalty of $5,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to $5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is $5,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Failure to contain the facility's wastewater allowed Natural Milk to save time and money. However, any economic benefit Natural Milk received was likely minimal. Therefore, no economic benefit is being assessed in this administrative consent order.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 4 observed a red, frothy discharge to the river and the discharge had elevated levels of pollutants. The MMP is a crucial aspect of the DNR's animal feeding operation program. The MMP ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to crop land at an agronomic rate in order to prevent over application of manure. The MMP and water quality violations threaten the integrity of the water quality program. Based on the above considerations, $3,000.00 is assessed for this factor.

Culpability – Natural Milk has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Based on the above considerations, $2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Natural Milk. For that reason, Natural Milk waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191

for Edmund J. Tormey
RICHARD A. LEOPOLD
Iowa Department of Natural Resources

Dated this 30th day of December, 2008.

NATURAL MILK PRODUCTION, LLLP, dba
ULTIMILK DAIRY COMPANY

Dated this 16 day of December 2008.

#64174; Kelli Book; Field Office 4; Gene Tinker; EPA; I.C.1, VIII.C.3, VIII.D.3.a and b